

CHAPTER 57
WORKERS' COMPENSATION SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS
[Prior to 10/22/86, Insurance Department[510]]

191—57.1(87,505) General provisions.

57.1(1) The purpose of this chapter is to provide general guidelines for the approval of self-insurance for workers' compensation liability for individual employers.

57.1(2) The authority to promulgate these rules is found in Iowa Code section 505.8.

57.1(3) Certificates of relief from insurance shall not exempt an employer from Iowa Code chapters 85, 85A, 85B, 86 and 87.

57.1(4) The state of Iowa shall be exempt from the requirements of this chapter.

57.1(5) A political subdivision of the state filing for a certificate of relief from insurance under this chapter shall be exempt from the requirements of subrule 57.3(1), but must comply with the other provisions of this chapter.

191—57.2(87,505) Definitions.

57.2(1) "*Commissioner*" shall mean the commissioner of the insurance division of Iowa, appointed by the governor pursuant to Iowa Code section 505.2.

57.2(2) "*Division*" shall mean the insurance division of Iowa.

57.2(3) "*Employer*" shall be defined as set forth in Iowa Code section 85.61.

57.2(4) "*Self-insurer*" shall mean an employer who has been granted relief from the requirement of insurance by the commissioner after having complied with the relevant portions of this chapter but shall not include an employer who is a member of a group of employers under 191—chapter 56.

57.2(5) "*Insolvent*" or "*insolvency*" means the inability of a workers' compensation self-insurer to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its liabilities over its assets or by its not having sufficient assets to insure all of its outstanding liabilities after paying all accrued claims owed by it.

57.2(6) "*Parent company*" shall mean a company that owns at least 20 percent of the outstanding stock of another company.

191—57.3(87,505) Requirements for self-insurance. To qualify to receive a certificate of relief from insurance, an employer must satisfy the following requirements:

57.3(1) File with the division an annual surety bond issued by an insurance company licensed to do business in the state of Iowa in an amount determined by applying the formula below, but in no case shall the bond be less than \$200,000 or, if an employer cannot obtain a bond, then any other security such as cash or negotiable securities which is agreeable to the commissioner, in an equal amount. Such surety bond shall be in the form prescribed by the commissioner and, in the event of insolvency of the employer, shall be payable to the division to ensure the payment of the employer's workers' compensation liabilities in the same manner as if the division were such employer, subject to the dollar limitation of such surety bond.

The following formula will be used to determine the appropriate amount of security required:

a. Determine the following three ratios:

(1) Current assets: Current liabilities

(2) Capital + retained earning (net of treasury stock) as a percentage of sales (less discounts)

(3) Long term debt: Capital + retained earnings

b. Upon determination of the value for the above ratios, points will be calculated from the following tables:

(1) Current assets to current liabilities

2 : = 6 Points

1.75 : = 5 Points

1.6 : = 4 Points

- 1.4 : = 3 Points
- 1.25 : = 2 Points
- 1.1 : = 1 Point
- 1 : = 0 Points

(2) Equity to sales

- 20% = 6 Points
- 17.5% = 5 Points
- 13.5% = 4 Points
- 10% = 3 Points
- 8.5% = 2 Points
- 7% = 1 Point
- 5% = 0 Points

(3) Long term debt to equity

- 1 : 2 = 6 Points
- 1 : 1.75 = 5 Points
- 1 : 1.6 = 4 Points
- 1 : 1.4 = 3 Points
- 1 : 1.25 = 2 Points
- 1 : 1.11 = 1 Point
- 1 : 1 = 0 Points

c. Total the number of points for the three ratios and assign the appropriate percentage:

- 18 Points = 0%
- 16 - 17 Points = 20%
- 14 - 15 Points = 40%
- 12 - 13 Points = 60%
- 9 - 11 Points = 70%
- Less than 9 points = 100%

d. The amount of the required security shall then be calculated as follows:

(1) Determine the three years average of medical payments and compensation paid under the workers' compensation laws (If fiscal year, specify dates _____ through _____.)

Year 1 Year 2 Year 3 Total
\$ _____ + _____ + _____ = \$ _____

Divide the total by 3 = \$ _____

(2) Multiply this average by 2 = \$ _____

(3) Enter the total amount of compensation for fatalities and permanent disabilities, both permanent total and permanent partial for which the employer is presently liable but has not paid, including medical reserves. \$ _____

(4) Add lines 2 and 3 \$ _____

(5) Multiply line 4 by the percentage determined in subrule 57.3(1) "c." \$ _____

This, when rounded to the nearest thousand, will be the security required. \$ _____

57.3(2) For a private employer, a parental guarantee, completed on forms provided by the division, to cover statutory losses and any loss adjusting expense is required from any parent company.

a. The parental guarantee shall provide for giving the commissioner 60 days' notice for cancellation. Once notice is given, the division reserves the right to require additional security to be obtained prior to the effective date of the cancellation.

b. For a subsidiary that is to be sold, which desires to avoid cancellation of the certificate of relief from insurance, it must file pro forma financial statements representing the condition of the subsidiary before and after sale, sales agreement, financial statement of acquiring company and the parental guarantee of acquiring company.

57.3(3) Each employer shall have within its own organization ample facilities and competent personnel to service its own program with respect to claims, administration, loss prevention, loss control, safety engineering and rehabilitation services for injured employees or shall contract with a service company to provide these services.

191—57.4(87,505) Additional security requirements.

57.4(1) If at any time the commissioner feels additional security is necessary because any one or more of the following factors are present, the commissioner may require such additional security as provided in subrule 57.4(2):

- a.* Insufficient liquid assets or retained earnings;
- b.* A deteriorating financial condition, as evidenced by a comparison of current financial statements to recent past financial statements;
- c.* The workers' compensation loss experience is significantly higher than the average for the industry the company is in;
- d.* The loss potential within and without the state is higher than what the company can apparently withstand;
- e.* Any other relevant consideration(s).

57.4(2) When the commissioner determines the conditions of subrule 57.4(1) have been met, any one or more of the following types of additional security may be required, in an amount determined by the commissioner:

- a.* Additional surety bond;
- b.* Irrevocable letter of credit;
- c.* Annual aggregate excess insurance;
- d.* Specific per occurrence excess insurance; or
- e.* Trust fund.

(1) If a trust fund is established, the commissioner shall be the trustee. The employer may invest the funds in accordance with Iowa Code section 636.23, subsections 1 through 12. The trust document and the evidence of invested assets are to be kept in the vault of the division or in some other secure place designated by the commissioner.

(2) Interest or dividends, or both, on the trust assets are to accumulate to the trust unless the commissioner deems the trust has sufficient assets, in which case the interest or dividends, or both, are to be delivered to the employer.

(3) The trust fund is to be used to pay losses and loss adjustment expenses if the employer is unable to pay the statutorily required compensation benefits.

191—57.5(87,505) Application for an individual self-insurer.

57.5(1) An applicant for a certificate of relief from insurance shall submit a completed application to the division together with the following:

- a.* A surety bond or other security, in the amount determined under rule 57.3(87,505);
- b.* Parental guarantee from the ultimate controlling parent, if applicable;
- c.* Most recent audited financial statement, such as that included in the shareholders annual report. If such statement is over six months old, also include the latest unaudited financial statement and an affidavit signed by the treasurer of the company stating that there has been no material lessening of net worth or other adverse changes since the last audited statement, or, if there were, an explanation of

such changes. For subsidiaries, this information is to be furnished on the ultimate controlling parent company;

d. Data from the immediate past five years on paid and outstanding Iowa workers' compensation losses subject to self-insurance; and

e. A fee of \$100 per application review and \$100 per certificate issued, paid in separate checks. If the application is denied, the fee for the issuance of a certificate will be returned to the applicant. The division will either issue one certificate for each parent and each subsidiary or the division will issue one certificate only for the approved parent and all approved subsidiaries, at the applicant's option.

57.5(2) After an initial review, the division may require additional relevant information or additional security, as provided in rule 57.4(87,505).

57.5(3) Within a reasonable time, the division will rule on the application and either issue a certificate of relief from insurance or send a letter denying the application with a specific explanation.

191—57.6 Rescinded, effective 4/27/88.

191—57.7(87,505) Excess insurance. No contract or policy of per occurrence or aggregate excess insurance shall be recognized in considering the ability of an applicant to fulfill its financial obligations under the workers' compensation Act, unless such contract or policy complies with the following:

57.7(1) Is issued by a company:

- a.* Licensed to transact casualty business in this state; or
- b.* Listed in the most recent NAIC publication "Financial Review of Alien Insurers" (commonly known as the white list); or
- c.* Listed on the most recent List of Acceptable Non-Admitted Insurers prepared by this department.

57.7(2) Has a term of not less than one year.

57.7(3) No cancellation, termination or alteration of coverage whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of such cancellation, termination, or alteration has been filed with the commissioner unless an earlier date is approved by the commissioner.

191—57.8(87,505) Insolvency. If the individual employer becomes insolvent, the commissioner may appoint a party to receive funds on the surety bond or other posted security to be dispersed to individual claimants.

191—57.9(87,505) Renewals.

57.9(1) Individual employers.

a. A certificate of relief from insurance is valid for one year, unless sooner revoked under the provisions of rule 57.11(87,505). Such certificate is effective from August 1 to July 31.

b. By June 1 of each year, each individual employer must submit:

- (1) A completed application;
- (2) A statement of financial condition audited by an independent certified public accountant as of the end of the most recently completed fiscal year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for (a) known claims and expenses associated therewith, (b) claims incurred but not reported and expenses associated therewith, (c) unearned premiums and (d) bad debts, which reserves shall be shown as liabilities. An actuarial opinion regarding reserves for items (a) and (b) above shall be included in the audited financial statement. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners;

(3) Any additional relevant information required by the division; and

(4) The required fee.

c. Depending on any change in financial condition, the commissioner may require additional security, as provided in rule 57.4(87,505).

d. The commissioner reserves the right to require financial reports more frequently than once each year if a deterioration in financial security warrants a closer scrutiny of an individual employer.

57.9(2) Rescinded, effective 4/27/88.

191—57.10(87,505) Periodic examination. The commissioner reserves the right to examine an employer as often as it deems necessary. Cost of the examination is to be paid by the employer. Examination shall include but not be limited to adequacy of loss reserves and claims handling practices.

191—57.11(87,505) Grounds for nonrenewal or revocation of a certificate of relief from insurance. The following constitute grounds for nonrenewal or revocation of a certificate of relief from insurance:

57.11(1) Failure to comply with any provisions of these rules or of Iowa Code chapter 85, 85A, 85B, 86 or 87;

57.11(2) Failure to comply with any lawful order of the commissioner;

57.11(3) Failure to promptly pay lawful compensation claims;

57.11(4) Committing an unfair or deceptive act or practice;

57.11(5) Deterioration of financial condition adversely affecting the certificate holder's ability to pay expected losses.

191—57.12(87,505) Hearing and appeal. Prior to denying a renewal application or revoking a certificate issued under this chapter, a certificate holder shall be given a hearing and a right to appeal as provided in rule 191—3.1(17A,502,505) et seq.

191—57.13(87,505) Existing approved self-insurers.

57.13(1) All individual employers which were given a certificate of relief from insurance or some other approval to self-insure from the division prior to the effective date of these rules shall bring themselves into full compliance with these rules within 90 days after their effective date or by the filing time set out for renewals, whichever comes later.

57.13(2) An existing individual self-insurer may petition the commissioner for a waiver of a rule, or rules. The commissioner may grant such waiver upon showing to the commissioner's satisfaction that the employer is solvent and has the ability to pay workers' compensation benefits as required by law.

191—57.14(87,505) Severability clause. If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter.

These rules are intended to implement Iowa Code sections 87.11 and 87.20.

[Filed 6/1/84, Notice 4/11/84—published 6/20/84, effective 8/1/84]

[Filed emergency 7/23/84—published 8/15/84, effective 8/1/84]

[Editorially transferred from [510] to [191] IAC Supp. 10/22/86; see IAB 7/30/86]

[Filed 3/4/88, Notice 1/27/88—published 3/23/88, effective 4/27/88]

[Filed 4/14/89, Notice 11/30/88—published 5/3/89, effective 6/7/89]